



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

August 19, 1975

McDougal
BRUCE E. BABBITT
ATTORNEY GENERAL

(R75-454)

75-280

Mr. John W. Lovell
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Attorneys at Law
199 North Stone Avenue
Tucson, Arizona 85701

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ARIZONA ATTORNEY GENERAL

Dear Mr. Lovell:

We have reviewed your letter opinion dated July 11, 1975, addressed to Mr. Tony Komadina, Jr., Superintendent, Marana Public Schools, which answered the question whether a Greyhound type bus which is used by the Marana Public Schools to transport its students on activity trips is a "school bus" as that term is used in the Arizona statutes. Because of the importance of the question presented, this office has decided to fully restate the answer. In so doing, your opinion served as a substantial aid.

For the purpose of this opinion, we shall assume the following facts to be true without exception. A Greyhound type bus will be used by the school district solely and exclusively for the purpose of transporting its students from the school facility to another location without ever discharging or picking up any of those students until the bus arrives at its final destination. In other words, the bus involved will never be utilized to discharge any student or other person, or to pick up any student or other person, at an interim location between the point where the first student or person boards the bus and the point where the first student or other person exits from the bus for any purpose, with the exception that persons may temporarily leave the bus at a rest stop before the bus reaches its final destination. It should be understood that this opinion is not applicable to any situation in which a Greyhound type bus is used in any manner other than as previously described.

Under the foregoing conditions, the question which must be answered is whether the bus, when being used by a school district under the above conditions, constitutes a "school bus" as that term is utilized in paragraph 40 of A.R.S. § 28-101. That provision states as follows:



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for the reasons hereafter set forth, we do not believe the statute should be so interpreted. In reaching this conclusion, we are not unmindful of the fact that the statute has been so interpreted by two prior opinions of this office, these being Attorney General Opinions No. 52-197 and No. 61-69. The second of those opinions obviously relied upon the first, and the first dealt with a possibly unsafe, government surplus semi-trailer. We are not here concerned with an unsafe bus. Furthermore, both of those opinions were issued without a helpful comparison of our statute to the laws of any other state and without the assistance of the federal government's efforts in this area. As a result, to the extent that they are inconsistent with this opinion, they should no longer be adhered to.

A comparison of the laws of several other states reveals that some state legislatures have defined the term "school bus" in a broader fashion than has Arizona. For instance, the California statutory provision, which is found in § 16851 of its Education Code, defines that term to mean any motor vehicle being used for the transportation of any school pupil to and from a school or to and from school activities, with certain exceptions not here relevant. The State of Washington statutes, at RCWA 46.04.521, defines the term "school bus" to mean every motor vehicle used regularly to transport children to and from school or in connection with school activities, with a certain exception not here relevant. Similarly, § 140 of the New York Vehicle and Traffic Law, McKinney's Consolidated Laws of New York Annotated, Book 62A, defines the term "school bus", insofar as it is relevant to the question with which we are concerned, to mean a motor vehicle operated for the transportation of pupils to or from school or school activities. It seems clear that each of the last-mentioned state statutes is more comprehensive than Arizona's. Each of such statutes has obviously been designed to include within the definition of school bus a bus being used for the purpose of an activity trip between one point and another. The Arizona statute, on the other hand, limits the definition to a use for the purpose of transporting children "to or from school". We think the phrase "to or from school" as used in the Arizona statute means picking children up at various locations within a school district to transport them to school and then discharging those students at those locations following the close of the school day. In other words, the term "school bus" as used in the Arizona statutes refers to a bus that makes frequent stops and starts while picking up and discharging students.

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'School bus' means a motor vehicle owned by a public or governmental agency or other institution, and operated for the transportation of children to or from school or privately-owned and operated for compensation for the transportation of children to or from school.

If the Greyhound type bus, when used in the fashion above-described, falls within the above statutory definition of a school bus, then it must comply with the Arizona Minimum Standards for School Busses, 1967 Revised Edition (hereafter "Minimum Standards"), which have been promulgated pursuant to A.R.S. § 28-900. On the other hand, if the Greyhound type bus, when used in the manner above-described, does not fall within that statutory definition, then it need not comply with the Minimum Standards.

Parenthetically, in this connection, it is clear that the Greyhound type bus does not meet the Minimum Standards. What is more, it is clear that the Greyhound type bus cannot inexpensively be reconditioned to meet those standards. For instance, the Minimum Standards require that a school bus contain a frame, or something equivalent to a frame, of such design as to correspond at least to the standard practice for trucks of the same general load characteristics which are used for severe service. Minimum Standards, p. 9. The Greyhound type bus contains no such frame. Furthermore, the Minimum Standards require various other items to be included on a school bus that are not found on a Greyhound type bus, such as, for instance, an emergency door at the rear of the bus, the yellow school bus color, alternating flashing red signal lamps, and the bus body to be attached to a chassis frame. In light of these and other requirements set forth in the Minimum Standards, the Greyhound type bus cannot, as a practical matter, be converted to meet the requirements of the Minimum Standards.

In order for a bus to be a "school bus" as that term is used in paragraph 40 of A.R.S. § 28-101, it must be "operated for the transportation of children to or from school". If that phrase were given its strict, literal interpretation, it would obviously apply to the use, as outlined above, of the Greyhound type bus, since that bus will be used to transport students from a school facility to another point and then back again, which would include transportation both from and to school. However,

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It should be pointed out, somewhat surprisingly, that neither our research nor yours has uncovered any case, whether from Arizona or any other jurisdiction, interpreting the phrase "to or from school" in this context. On the other hand, we are not completely without guidance. Highway Safety Program Standard No. 17, 23 C.F.R. § 1204.4, which was promulgated in May, 1972 by the Secretary of the United States Department of Transportation in accordance with the Highway Safety Act of 1966 (Chapter 4 of Title 23, U.S.C.), provides in Part III thereof, that a "Type I school vehicle" means any motor vehicle, except a trailer, used to carry more than 16 pupils to and from school. (A "Type II school vehicle" is defined as one carrying 16 or less pupils.) The definition then further provides that it includes vehicles that are at any time used to carry school children and school personnel exclusively. But in interpreting that definition in response to a question concerning the meaning of the term "to and from school", the National Highway Traffic Safety Administration of the United States Department of Transportation (hereafter "NHTSA") stated that the term meant the transportation of school children and school personnel from their homes or the nearest bus stop to their assigned school building for classroom studies and return. See Notice 900, dated April 11, 1974, which pertained to guidelines for implementing Standard 17, as amended.

What is more, the NHTSA Highway Safety Program Manual No. 17, entitled "Pupil Transportation Safety", which was published in February, 1974, and which interprets Standard 17, provides, on Page IV-3 thereof, that a vehicle used exclusively for field trip or charter work purposes is not to be identified as a Type I school vehicle. The phrase "field trip" includes an activity trip of the type for which the Greyhound type bus is and will be used. It can thus be seen that this office's interpretation of the term "school bus" as used in paragraph 40 of A.R.S. § 28-101 is consistent with the present federal highway safety requirements relating to school bus identification.

It is our belief that our interpretation of paragraph 40 or A.R.S. § 28-101 is also consistent with the meaning originally intended by the Arizona Legislature, in light of the contrast of Arizona's definition with the definition utilized by certain other states. Furthermore, this office has been advised by representatives of the United States and Arizona Departments of Transportation that there is no evidence of which they are aware that a Greyhound type bus is less safe than the typical school bus when the Greyhound type bus is used for highway travel between a school and another point. Representatives of the Arizona Department of Transportation have also advised us that there is no difference in relative safety at high speed between the two buses if all their characteristics, such as steering and braking, are considered.

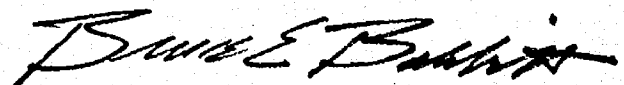
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In light of the conclusion we have reached in this opinion, it would now appear that a Greyhound type bus used exclusively for activity trip purposes is not subject to the mandatory school bus inspection carried out by representatives of the Arizona Department of Transportation pursuant to A.R.S. § 28-984. We therefore feel compelled to limit the application of this opinion only to those Greyhound type busses which an owner-school district permits representatives of the Arizona Department of Transportation to inspect, under a general safety inspection, as part of their inspection of that school district's school busses, and as frequently as that district's school busses are so inspected. Furthermore, if such an inspection should bring to light any defects or items requiring repair on such Greyhound type busses, then the owner-school district must immediately repair, or cause to be repaired, the defects of items discovered by that inspection. Upon any failure of that school district to so repair the Greyhound type bus, this opinion will have no application to that school district's use of that Greyhound type bus. In this connection, we have been advised by representatives of the Arizona Department of Transportation that they will undertake to render general safety inspections on all busses, Greyhound type busses and school busses, owned by all school districts in the State of Arizona. Greyhound type busses will be inspected as frequently as school busses.

Lastly, this opinion shall not apply to any school district which operates a Greyhound type bus without complying with all of the requirements set forth in the Arizona Regulations for School Bus Operation published by the Arizona Department of Transportation.

Should you have any questions concerning any of the above, please let us know.

Sincerely,



BRUCE E. BABBITT
Attorney General

BEB:nms



OFFICE OF THE
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BRUCE E. BABBITT
ATTORNEY GENERAL

August 18, 1975

Mr. Jerry Shumway
Manager, Pupil Transportation
Office of Highway Safety
Arizona Department of Transportation
1655 West Jackson
Phoenix, Arizona 85007

Dear Mr. Shumway:

I wish to thank you for all of the help you have given us relating to the activity bus question with which this office was faced and, specifically, for your comprehensive letter of August 7, 1975, relating to that question.

In this regard, I am enclosing a copy of our concurring opinion relating to the activity bus question. Please note that it sets forth that the Arizona Department of Transportation will undertake to inspect activity trip buses as frequently and as comprehensively as school buses. Please also note that the opinion requires school districts to operate the activity trip buses in accordance with the Arizona Regulations for School Bus Operation. Consequently, I would appreciate your forwarding a copy of the enclosed opinion to all appropriate persons, including the members of your Department.

Should there be any questions concerning any matter set forth in the opinion, please let us know.

Sincerely,

BRUCE E. BABBITT
Attorney General

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Enclosure

